Shaffarizan bin Mohamad v Government of Malaysia c/o Attorney General's Chambers & Anor

HIGH COURT (KUCHING) — APPLICATION FOR JUDICIAL REVIEW NO KCH-13–4/10 OF 2013
MAIRIN IDANG JC
23 MAY 2014

Public Servants — Termination of service — Failure to comply with conditions of service — Application for certiorari to quash decision to terminate — Applicant a probationary teacher who was not confirmed in position — Applicant's services terminated under Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 — One month notice given my employer — Whether termination lawful — Whether applicant could be terminated with one month notice since still in probationary stage

The applicant was a former probationary teacher employed by the Ministry of Education Malaysia. The first respondent was the Government of Malaysia and would be vicariously liable for the conduct of the second respondent. The second respondent was, inter alia, responsible for the appointment, confirmation and termination of members of the educational services which included the applicant. The Ministry of Education Malaysia (Human Resource Division) had offered the applicant a post of 'Guru Sandaran Terlatih Siswazah' subject to 'syarat-syarat pelantikan dan perkhidmatan seperti di lampiran 'A'. The applicant's probation as 'Pegawai Perkhidmatan Pendidikan Siswazah gred DG 41' ('the said post') was extended from 2 January 2012 to 1 January 2013. On or about 7 May 2013, the second respondent had issued a letter to the applicant to terminate his service pursuant to Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 ('the Regulations') as he had not been confirmed since his appointment on the ground of his failure to fulfill the conditions for confirmation in the service and that the termination was in accordance with the Regulations. The applicant submits that his appointment as a teacher should not have been terminated. Instead his position as a probationary teacher should have been confirmed as he had fulfilled the requirements for confirmation. The respondents' assertion was that the applicant was then still not confirmed when his service was terminated. Not being a confirmed officer, the respondents therefore had the power to do so by giving the appellant a one month notice. This was an application by the applicant for judicial review under O 53 of the Rules of Court 2012 ('the ROC'). The applicant sought an order of certiorari to quash the decision made by the second respondent in refusing grant to the applicant confirmation in the education service; the decision of the second respondent pursuant to reg 53 of the Regulation that the applicant's service was terminated; an order that the

plaintiff was still a member of the education service; an order that an account be taken of all salaries, emolument and other benefits lawfully due to him from the date if his termination; and reinstatement to his former position.

Held, dismissing the application:

(1) The applicant was not confirmed in his appointment. As such the second respondent was entitled to terminate the applicant's appointment. The law always recognise a distinction between a probationer and a permanent employee. A probationary officer would be terminated in his post whereas a permanent officer would be dismissed in his post. The position of the applicant was also subjected to the letter of appointment and *Lampiran* 'A' that his employment could be terminated by 'Kerajaan berhak menamatkan perkhidmatan tuan/puan dengan memberi sebulan notis atau membayar sebulan elaun sebagai pengganti notis.' The applicant's relationship with the respondents would be based on the letter of appointment and the *Lampiran* A. Thus the termination of the applicant by giving him one month notice was valid and in accordance with the letter of appointment and reg 50(1) of the Regulations (see paras 37–38).

(2) The applicant had raised other issues why his application should be allowed. Those issues would only be a valid consideration if the applicant was already a confirmed officer and the respondents had dismissed him from his post. The applicant might not have appreciated that he was not dismissed but he was terminated from his service because he was on probation and not confirmed in his post (see para 39).

[Bahasa Malaysia summary

Pemohon adalah bekas guru percubaan yang diambil bekerja oleh Kementerian Pelajaran Malaysia. Responden pertama adalah Kerajaan Malaysia dan akan bertanggungjawab secara vikarius untuk kelakuan responden kedua. Responden kedua adalah, antara lain, bertanggungjawab untuk pelantikan, pengesahan dan penamatan ahli-ahli perkhidmatan pelajaran yang mana termasuk pemohon. Kementerian Pelajaran Malaysia (Bahagian Sumber Manusia) telah menawarkan pemohon jawatan 'Guru Sandaran Terlatih Siswazah' tertakluk kepada 'syarat-syarat pelantikan dan perkhidmatan seperti di lampiran 'A'. Percubaan pemohon sebagai 'Pegawai Perkhidmatan Pendidikan Siswazah gred DG 41' ('jawatan tersebut') dilanjutkan dari 2 Januari 2012 kepada 1 Januari 2013. Pada atau lebih kurang pada 7 Mei 2013, responden kedua telah mengeluarkan surat kepada pemohon untuk menamatkan perkhidmatannya berikutan Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat dan Penamatan Perkhidmatan) 2012 ('Peraturan-Peraturan') memandangkan dia tidak disahkan kerana pelantikannya atas alasan kegagalannya untuk memenuhi syarat untuk pengesahan dalam perkhidmatan dan bahawa penamatan adalah mengikut

Peraturan-Peraturan. Pemohon berhujah bahawa pelantikannya sebagai guru tidak patut ditamatkan. Sebaliknya jawatannya sebagai guru percubaan patut disahkan kerana dia telah memenuhi kehendak untuk pengesahan. Hujahan responden-responden adalah bahawa pemohon masih pada ketika itu tidak disahkan apabila perkhidmatannya ditamatkan. Kerana bukan pegawai sah, responden-responden oleh itu mempunyai kuasa untuk berbuat sedemikian dengan memberi perayu notis satu bulan. Ini adalah permohonan oleh pemohon untuk semakan kehakiman di bawah A 53 Kaedah-Kaedah Mahkamah 2012 ('KKM'). Pemohon memohon perintah untuk certiorari untuk membatalkan keputusan yang dibuat oleh responden kedua dalam menolak daripada memberikan kepada pemohon pengesahan dalam perkhidmatan pelajaran; keputusan responden kedua berikutan peraturan 53 Peraturan-Peraturan bahawa perkhidmatan pemohon ditamatkan; perintah bahawa plaintif adalah masih ahli perkhidmatan pelajaran; perintah bahawa pengiraan diambil terhadap kesemua gaji, emolumen dan faedah lain yang sah untuk dibayar kepadanya dari tarikh penamatannya; dan pengembalian kepada jawatan terdahulunya.

Diputuskan, menolak permohonan:

(1) Pemohon tidak disahkan dalam pelantikannya. Dengan itu responden kedua berhak untuk menamatkan pelantikan pemohon. Undang-undang sentiasa menerima perbezaan antara pegawai dalam percubaan dan pekerja tetap. Pegawai dalam percubaan akan ditamatkan dalam jawatannya sebaliknya pegawai tetap akan dibuang kerja dalam jawatannya. Jawatan pemohon juga adalah tertakluk kepada surat pelantikan dan Lampiran 'A' bahawa pekerjaannya boleh ditamatkan oleh 'Kerajaan berhak menamatkan perkhidmatan tuan/puan dengan memberi sebulan notis atau membayar sebulan elaun sebagai pengganti notis.' Hubungan pemohon dengan responden-responden akan berdasarkan atas surat pelantikan dan Lampiran A. Oleh itu, penamatan pemohon dengan memberi dia notis satu bulan adalah sah dan mengikut surat pelantikan dan peraturan 50(1) Peraturan-Peraturan (lihat perenggan 37–38).

(2) Pemohon telah membangkitkan isu-isu lain mengapa permohonannya patut dibenarkan. Isu-isu tersebut hanya akan menjadi pertimbangan sah jika pemohon sudah menjadi pegawai yang disahkan dan responden-responden telah membuangnya daripada jawatannya. Pemohon mungkin tidak menyedari sepenuhnya yang dia bukan dibuang kerja tetapi ditamatkan daripada perkhidmatannya kerana dia adalah dalam tempoh percubaan dan tidak disahkan dalam jawatannya (lihat perenggan 39).]

Notes

For a case on failure to comply with conditions of service, see 10 *Mallal's Digest* (4th Ed 2013 Reissue) para 2226.

Cases referred to

Abdul Rauf bin Alif v Suruhanjaya Pasukan Polis & Anor [2003] 1 MLJ 18, CA (distd)

Chua Chin Hung v Minister of Menteri Sumber Manusia [2012] MLJU 1107, HC (refd)

Domnic Sevam a/l S Gnanapragasam v Kerajaan Malaysia & Ors [2007] 2 MLJ 761, HC (refd)

Dr Amir Hussein bin Baharuddin v Universiti Sains Malaysia [1989] 3 MLJ 298, HC (refd)

Gnanasundram v Public Services Commission [1966] 1 MLJ 157 (refd)

Government of Malaysia v Lionel [1974] 1 MLJ 3, PC (refd)

Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor [1998] 1 MLJ 305, CA (refd)

Minister of Labour, Malaysia v Sanjiv Oberoi & Anor [1990] 1 MLJ 112, SC (folld)

Mohamad Solleh bin Mat Isa v Aziz bin Salleh & Anor (Application for Judicial Review No 25–3 of 2011) (unreported), HC (refd)

Munusamy v Public Services Commission [1967] 1 AC 348, PC (refd)

Nordin HJ Zakaria (Timbalan Ketua polis Kelantan) v Mohd Noor Abdullah [2004] 2 CLJ 777 (refd)

Quek Chek Yen v Majlis Daerah Kulai [1986] 2 MLJ 290, SC (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 62, FC (refd)

Robert John Reeves v Mentri Sumber Manusia, Malaysia & Anor [2000] 1 MLJ 107, HC (refd)

Zakiah bte Ishak v Majlis Daerah Hulu Selangor Darul Ehsan [2005] 6 MLJ 517, CA (folld)

Legislation referred to

Industrial Relations Act 1967 s 20(3)

Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 regs 29(1), 50(1), 51, 52, 53

Public Officers (Conduct and Discipline) Regulations 1993 reg 49

Rules of Court 2012 O 53

Shaffarizan bin Mohamad for the applicant.

Shamsul Bolhassan (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Mairin Idang JC:

INTRODUCTION

[1] This is an application by the applicant for judicial review under O 53 of the Rules of Court 2012 ('the ROC 2012') seeking the following reliefs:

THE RELIEFS SOUGHT

[2] The reliefs sought are:

(a) the applicant be granted under O 53 of the Rule of Court 2012 for an order of certiorari to quash:

(i) the decision made by the second respondent dated 3 September 2013 and communicated to the applicant on the 7 September 2013 refusing grant to the applicant confirmation in the education service; and

(ii) the decision made by the second respondent dated 31 July 2013 made pursuant to reg 53 of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 ('the Regulations') that the applicant's service as 'Pegawai Perkhidmatan Pendidikan Siswazah Gred DG 41' is terminated,

(b) an order that the plaintiff is still a member of the education service;

(c) an order that an account be taken of all salaries, emolument and other benefits lawfully due to him from the date of his termination;

(d) an order that the plaintiff be reinstead as 'Pegawai Perkhidmatan Pendidikan Siswazah Gred DG 41';

(e) such other order(s) or relief(s) this honourable court may deems fit and just; and

(f) costs of an occasioned by this application be to the applicant.

THE GROUNDS

[3] The grounds in support of this application are contained in the statement (encl 2) and the affidavit affirmed on 8 October 2013 on behalf of the applicant (encl 3).

[4] The gist and background of the complaint of the application as deduced from the relevant documents for the purpose of this application (encl 1) are as follows:

(a) that the applicant has fulfilled all conditions specified in the scheme of

service as stated in reg 29(1) of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 including successfully undergone requisite programs organised by the Malaysian Education Ministry was unreasonably denied by the second respondent to be confirmed in the education service. The conditions specified in the scheme of service as stated in reg 29(1) of the Public Officers (Appointment, Promotion and Termination of Service) Regulation 2012 include:

(i) to complete the probation period of one to three years;

(ii) to attend and successfully complete induction programs; and

(iii) certification by the head of department,

(b) despite the fact that the applicant has fulfilled all conditions required, the second respondent has unreasonably denied the confirmation of the applicant's status as education officer and subsequently premised on the ground that the applicant's failure to be confirmed in the education service terminated the applicant's service;

(c) the applicant was not given the full opportunity under reg 52 of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 to show cause why he should not be terminated from the education service when it was never made known to him which condition (if any) under the scheme of service that he has failed to fulfill;

(d) the notice of termination issued by the second respondent was issued with mala fide as the second respondent at the material time till to date refused to inform the applicant which conditions (if any) that the applicant has failed to comply with even though requested by the applicant in his letter to show cause dated 8 May 2013;

(e) the notice of termination dated 31 July 2013 and the letter dated 3 September 2013 issued by the second respondent is scandalous, irrational and unreasonable particularly when the applicant has fulfilled all requirements to be confirmed in the education service and was subsequently terminated by the second respondent without offering the applicant full opportunity to show cause;

(f) further grounds as contained in the affidavit of the applicant which is annexed therewith.

THE DECISION

[5] On 4 April 2014 I delivered my decision on the applicant's application for judicial review. I dismissed the applicant's application with no order as to costs. My reason for dismissing the applicant's application was on the basis that the applicant was not confirmed in his appointment. As such the second

respondent was entitled to terminate the applicant's appointment. I then informed parties that I would deliver the grounds of my judgment in the event of an appeal. This is my grounds.

THE BRIEF FACTS

[6] The applicant was a former probationary teacher employed by the Ministry of Education Malaysia. The first respondent is the Government of Malaysia and would be vicariously liable for the conduct of the second respondent. The second respondent is, inter alia, responsible for the appointment, confirmation and termination of members of the educational services which included the applicant.

[7] On the 31 December 2008 the Ministry of Education Malaysia (Human Resource Division) had offered the applicant a post of 'Guru Sandaran Terlatih Siswazah' subject to 'syarat-syarat pelantikan dan perkhidmatan seperti di lampiran 'A'. Pursuant to a letter dated 26 December 2008 from Jabatan Pelajaran Negeri Sarawak the applicant first posting was at SK Lutong, Miri.

[8] On the 17 February 2010 the second respondent confirmed the applicant's appointment as *guru sandaran*. On the 1 January 2012 the applicant was relocated to SK Jalan Ong Tiang Swee, Jalan Ong Tiang Swee Kuching. On 6 July 2012 the applicant's probation as 'Pegawai Perkhidmatan Pendidikan Siswazah gred DG 41' ('the said post') was extended from 2 January 2012 to 1 January 2013.

[9] In or about 7 May 2013 the second respondent had issued a letter to the applicant to terminate his service pursuant to *peraturan 50(1) Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat dan Penamatan Perkhidmatan) 2012* as he had not been confirmed since his appointment on 2 January 2009. Pursuant to this letter the applicant was requested to submit a written answer as to why the applicant should not be terminated in his post. On the 8 May 2013 the applicant submitted his reply and gave reasons why he should not be terminated.

[10] On the 31 July 2013 the second respondent notified the applicant that his post as probationary teacher was terminated pursuant to reg 53 of the Public Officers (Appointment, Promotion and Termination of Service) by giving him a 30 days' notice. On the 19 August 2013 the applicant appealed to the second respondent for a consideration on his termination.

[11] On the 3 September 2013 the second respondent had informed the applicant that the reason for his termination was his failure to fulfill the conditions for confirmation in the service and that the termination was in accordance with *peraturan 51 dan 53 Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat dan Penamatan Perkhidmatan) 2012*.

[12] Being dissatisfied with the second respondent's decision the applicant had filed this action.

SUBMISSIONS OF THE APPLICANT

[13] The applicant himself appeared before me and I believe he had prepared his written submission after perhaps having consulted some of his lawyers' friends on how to go about writing the submission. He said he could not afford a lawyer.

[14] The applicant submits that his appointment as a teacher should not have been terminated. Instead his position as a probationary teacher should have been confirmed as he had fulfilled the requirements for confirmation. He had fulfilled all the conditions specified in the scheme of service as stated in reg 29(1) of the Public Officers (Appointment, Promotion and Termination of service) Regulations 2012. The applicant had successfully undergone requisite programs organised by the Malaysian Education Ministry. The second respondent was therefore being unreasonable in not confirming him in his post.

[15] It was also the applicant's contention that the second respondent had taken into consideration matters such as psychological problems, accusing him of being aggressive, defensive, hot tempered also relying on the medical report which had allegedly diagnosed him as suffering from bi polar mood disorder.

[16] The applicant also contended that he had not been given full opportunity under reg 52 of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 to show cause as the exact condition for his termination was not made known to him despite his request.

[17] It was also the applicant's contention that he should have been terminated under reg 49 of the Public Officers (Conduct and Discipline) Regulations 1993 because the reason for the applicant's termination revolved around his behavior and whether he was fit to become an education officer.

[18] The applicant had also cited the following cases: *Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor* [1998] 1 MLJ 305 (CA); *Chua Chin Hung v Minister of Menteri Sumber Manusia* [2012] MLJU 1107 (in the

High Court of Malaysia in Shah Alam Selangor, Application for Judicial Review No 21–20 of 2011); *Mohamad Solleh bin Mat Isa v Aziz bin Salleh & Anor* (in the Malayan High Court in Kuantan, Application for Judicial Review No 25–3 of 2011) and *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 62.

SUBMISSION OF THE RESPONDENTS

[19] It is the respondents' contention that there were only two issues for the court determination. Firstly whether the termination was valid. Secondly, whether there was added duty to give reasons.

[20] The respondents' contention was that the applicant was on the 31 December 2008 appointed as *Guru Sandaran Terlatih DG41*. That amongst the terms of the appointment was that the applicant would be put on probationary period of one to three years. The applicant would also be bound by the terms of service as contained in the letter of offer as well as other relevant rules and regulations currently enforced by government.

[21] In essence the respondents' assertion was that the applicant's appointment was regulated by the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 ('the 2012 Regulations'). As such the applicant's appointment would require him to serve certain probation period until he was confirmed.

[22] The applicant was then still not confirmed when his service was terminated. Not being a confirmed officer the respondents therefore had the power to do so by giving the appellant a one month notice. There was also no duty on the part of the respondents to give reasons as to why the applicant's had failed to get himself confirmed.

[23] That the applicant was informed of the second defendant's proposed termination of the applicant's service pursuant to reg 50(1) of the 2012 Regulations. There was no dispute on this since by letters dated 8 and 17 May 2013 the applicant had responded to the notice. On the 31 July 2013 the second respondent notified the applicant of his termination by giving him one month notice.

[24] The respondents had relied on the following cases: *Government of Malaysia v Lionel* [1974] 1 MLJ 3; *Abd Rauf bin Alif v Suruhanjaya Pasukan Polis & Anor* [2003] 1 MLJ 18; *Zakiah bte Ishak v Majlis Daerah Hulu Selangor Darul Ehsan* [2005] 6 MLJ 517; *Gnanasundram v Public Services Commission* [1966] 1 MLJ 157; *Quek Chek Yen v Majlis Daerah Kulai* [1986] 2 MLJ 290; *Munusamy v Public Services Commission* [1967] 1 AC 348; *Dr Amir Hussein bin*

Baharuddin v Universiti Sains Malaysia [1989] 3 MLJ 298; *Robert John Reeves v Mentri Sumber Manusia, Malaysia & Anor* [2000] 1 MLJ 107; *Domnic Sevam a/l S Gnanapragasam v Kerajaan Malaysia & Ors* [2007] 2 MLJ 761; *Minister of Labour, Malaysia v Sanjiv Oberoi & Anor* [1990] 1 MLJ 112 and *Nordin HJ Zakaria (Timbalan Ketua polis Kelantan) v Mohd Noor Abdullah* [2004] 2 CLJ 777.

ANALYSIS

[25] Now the applicant's contention was that he should have been confirmed in his post as he had fulfilled the criteria for confirmation. The applicant also contended that he had not been given full opportunity under reg 52 of the Regulations 2012 to show cause as the exact condition for his termination was not made known to him despite his request. That he should have been terminated under reg 49 of the Public Officers (Conduct and Discipline) Regulations 1993 because the termination was based on his behavior and whether he was fit to become an education officer.

[26] However after going through the facts I agree with learned counsel for the respondents that the two issues that he had raised would answer all the matters raised by the applicant in support of his application herein.

[27] It is convenient to begin by clearing the ground. There is no dispute that the applicant was appointed by the respondent as *guru sandaran terlatih siswazah* vide letter dated the 31 December 2008 (see SM2 attached to affidavit of the applicant).

[28] Paragraph 5 of SM2 stated: 'Tawaran pelantikan ini adalah tertakluk kepada syarat-syarat pelantikan dan perkhidmatan seperti di Lampiran 'A'.'

[29] Paragraph 6 also stated: 'Bagi melengkapkan urusan pelantikan ini, tuan/puan adalah dikhendaki mengambil tindakan seperti berikut:

(i) meneliti syarat-syarat pelantikan dan perkhidmatan yang dinyatakan di LAMPIRAN 'A'.'

[30] Now *Lampiran* 'A' which was attached to SM2 contained several important terms and conditions namely as follows:

> 2. Pelantikan tuan/puan adalah sentiasa tertakluk kepada syarat- syarat perkhidmatan seperti beikut:
>
> (ii) Kerajaan berhak menamatkan perkhidmatan tuan/puan dengan memberi sebulan notis atau membayar sebulan elaun sebagai pengganti notis;.

[31] I have no doubt that the applicant would have gone through the letter

of appointment and the *Lampiran* 'A'. He definitely knew his position as *guru sandaran* as well as the *syarat-syarat*.

[32] Now it is common ground that the applicant had not been confirmed in his post as a teacher.

[33] The position of the applicant as a probation officer vis a vis his termination would be a lot clearer by reading the letter of appointment and *Lampiran* 'A' namely 'Kerajaan berhak menamatkan perkhidmatan tuan/puan dengan memberi sebulan notis atau membayar sebulan elaun sebagai pengganti notis.' In my opinion the applicant relationship with the respondents would be based on the letter of appointment and the *Lampiran* 'A'. The case of *Zakiah bte Ishak v Majlis Daerah Hulu* [2005] 6 MLJ 517 (tab 8 of respondents bundle of authorities) is relevant.

[34] The applicant was also subjected to the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012. It is at tab 2 of respondents' bundle of authorities. I now reproduced reg 50(1):

> Termination of service of an officer who fails to be confirmed.
>
> 50(1) Subject to sub-regulation (2), the Yang di-Pertuan Agong *may terminate the service of an officer who is on probation for his first appointment who has failed to be confirmed in service during the probation period, whether the initial probation period or its extension.* (Emphasis added.)

[35] Now the applicant had referred to me several cases in support of his application. I have gone through them and they are of no help. All these cases are not on termination of officers who had been confirmed in their posts. The cases referred to officers which were dismissed. I think the applicant missed the point. When the applicant was terminated in his post he was then still not confirmed.

[36] Learned counsel for the respondents on the other hand had cited to me several high authorities which support the contention that an officer who had not been confirmed in his post could be terminated by the respondents by giving one notice. I need only to refer herein some of the cases which support the contention that a probationary officer could be terminated:

(a) in *Abdul Rauf bin Alif v Suruhanjaya Pasukan Polis & Anor* [2003] 1 MLJ 18 the appellant therein was a probationer officer. His contract of employment provided for the termination of service during probationary period either one month's notice or one month's salary. In dismissing the appeal the Court of Appeal held that this was a case of termination simpliciter. I should also state here that the Court of Appeal in this case had followed *Government of Malaysia v Lionel* [1974] 1 MLJ

3, a Privy Council's decision. Lionel was also a temporary officer. It was held that under the laws of Malaysia a similar distinction between dismissal and termination of services appear to exist and there was nothing in the Constitution affects the right of government to terminate temporary employment in accordance with the terms of the engagement.

[37] Now as I have said the present application before me was a case of an officer who had yet to be confirmed not an officer who had been confirmed. The law always recognise a distinction between a probationer and a permanent employee. A probationary officer would be terminated in his post whereas a permanent officer would be dismissed in his post. This distinction was clearly made in *Abdul Rauf* at I p 20. I am therefore bound by this statement of the law. In the present case the applicant was issued with a termination letter pursuant to reg 50(1) of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012.

[38] I may also add here that the position of the applicant was also subjected to the letter of appointment and *Lampiran* 'A'. That his employment could be terminated by 'Kerajaan berhak menamatkan perkhidmatan tuan/puan dengan memberi sebulan notis atau membayar sebulan elaun sebagai pengganti notis'. In my opinion the applicant relationship with the respondents would be based on the letter of appointment and the *Lampiran* 'A'. Thus the termination of the applicant by giving him one month notice was valid and in accord with the letter of appointment and reg 50(1) of the Regulation 2012. The case of *Zakiah bte Ishak v Majlis Daerah Hulu* [2005] 6 MLJ 517 (tab 8 of respondents bundle of authorities) is relevant.

[39] But the applicant had raised other issues why his application should be allowed. With respect and it is my opinion that those issues are only valid consideration if the applicant was already a confirmed officer and the respondents had dismissed him from his post. The applicant might not have appreciated that he was not dismissed but he was terminated from his service because he was on probation and not confirmed in his post. Since the applicant had raised those issues. I think I should address the same for completion purpose.

[40] The position of an employee (or a teacher) on probationary status is very clear. The employee needs not be given a right of hearing to exculpate himself (*Zakiah bte Ishak* p 521 (8) E line 4). It was also held in *Zakiah bte Ishak* at p 523 (15) G 'Following the authorities cited above we hold that the fact that some allegations of misconduct were made against the appellant would not bar the respondent from terminating the services of the appellant pursuant to the terms of employment'. The applicant said he was more than eligible for

confirmation having fulfilled the criteria confirmation. But the point is he had not been confirmed. The applicant cannot be said that he had the legitimate expectation to be confirmed unless there was a promise or undertaking from the respondent to that effect. There are procedures for confirmation and the fact that the applicant was not confirmed meant that the applicant had not fulfilled such criteria.

[41] From the tone of the applicant submission he was eligible for confirmation. Perhaps I should refer to the following cases and quote the relevant passage on the meaning and true purport of the word eligible for. It had been held that 'eligible for' is not equivalent 'entitled to' and means no more than 'fit to be chosen for' (*Munusamy v Public Services Commission* [1967] AC 348 (HL) p 360 F line 6). In *Dr Amir Hussein bin Baharuddin v Universiti Sains Malaysia* [1989] 3 MLJ 298 (tab 11) at p 300 at C right column: 'However, the fact that he was eligible as such could in no way, confer upon him an entitlement to that appointment'.

[42] On the requirement to give reasons for not confirming the applicant in his post. I need only refer to the case cited by learned counsel for respondent namely *Minsiter of Labour, Malaysia v Sanjiv Oberoi & Anor* [1990] 1 MLJ 112 (tab 13) where the Supreme Court (then) held that the Minister was not required to give reasons in the exercise of the discretion afforded to him under s 20(3) of the Industrial Relations Act 1967. This case is relevant in view of the fact that the respondent in the present case had also exercised his discretion when not confirming the applicant. I also agree with learned counsel for the respondents that Regulations 2012 does not provide a duty to the second respondent to state his reasons after considering the applicant show cause letters dated 8 and 17 May 2013 respectively.

[43] It was also the contention of the applicant that he should have been terminated under reg 49 of the Public Officers (Conduct and Discipline) Regulation 1993 because the termination was based on his behavior and whether he was fit to become an education officer. This issue is not even stated as one of his grounds. I am of the opinion that it is not for the applicant to dictate to the respondents which regulation should be used. In this instant case the respondents had used reg 50(1) and it is my opinion that the applicant had properly been terminated in his post as probationary teacher.

CONCLUSION

[44] For reasons stated above I dismissed the applicant's application. As the applicant was then still unemployed I had asked the learned senior federal counsel on the costs and he had graciously agreed not to insist on the costs. I therefore made no order as to costs.

Application dismissed.

Reported by Afiq Mohamad Noor